

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2201
95TH GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organizations and Elections, May 12, 2010, with recommendation that the Senate Committee Substitute do pass.

5163S.05C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 443.701 and 443.703, RSMo, and to enact in lieu thereof three new sections relating to the Missouri secure and fair enforcement residential mortgage licensing act, with an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 443.701 and 443.703, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 443.701, 443.703,
3 and 443.704, to read as follows:

443.701. Sections 443.701 to 443.893 shall be known and may be cited as
2 the "Missouri Secure and Fair Enforcement for Mortgage Licensing [and
3 Residential Mortgage Brokers Licensing] Act".

443.703. 1. For the purposes of sections 443.701 to 443.893, the following
2 terms mean:

3 (1) "Advertisement", the attempt by publication, dissemination, or
4 circulation to induce, directly or indirectly, any person to apply for a loan to be
5 secured by residential real estate;

6 (2) "Affiliate":

7 (a) Any person who directly controls or is controlled by a residential
8 mortgage loan broker and any other company that is directly affecting activities
9 regulated by sections 443.701 to 443.893 that is controlled by the company that
10 controls the residential mortgage loan broker;

11 (b) Any person:

12 a. Who is controlled, directly or indirectly, by a trust or otherwise by or

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

13 for the benefit of shareholders who beneficially, or otherwise, controls, directly or
14 indirectly, by trust or otherwise, the residential mortgage loan broker or any
15 company that controls the residential mortgage loan broker; or

16 b. A majority of the directors or trustees of which constitute a majority of
17 the persons holding any such office with the residential mortgage loan broker or
18 any company that controls the residential mortgage loan broker; **or**

19 (c) Any company, including a real estate investment trust, that is
20 sponsored and advised on a contractual basis by the residential mortgage loan
21 broker or any subsidiary or affiliate of the residential mortgage loan broker;

22 (3) "Board", the residential mortgage board created in section 443.816;

23 (4) "Borrower", the person or persons who use the services of a licensee
24 to obtain a residential mortgage loan;

25 (5) "Depository institution", the same meaning as such term is defined in
26 Section 3 of the Federal Deposit Insurance Act, and includes any credit union;

27 (6) "Director", the director of the division of finance;

28 (7) "Division", the division of finance within the department of insurance,
29 financial institutions and professional registration;

30 (8) "Dwelling", the same meaning as such term is defined in the federal
31 Truth In Lending Act;

32 (9) "Escrow agent", a third party or person charged with the fiduciary
33 obligation for holding escrow funds on a residential mortgage loan pending final
34 payout of such funds in accordance with the terms of the residential mortgage
35 loan;

36 (10) "Exempt person", the following persons:

37 (a) Any person that is a depository institution or first-tier subsidiary or
38 service corporation thereof;

39 (b) Any person engaged solely in commercial mortgage lending or any
40 person making or acquiring commercial construction loans with the person's own
41 funds for the person's own investment;

42 (c) Any person engaged solely in the business of securing existing loans
43 on the secondary market provided such person does not make decisions about the
44 extension of credit to the borrower;

45 (d) Any wholesale mortgage lender who purchases existing mortgage loans
46 provided such wholesale lender does not make decisions about the extension of
47 credit to the borrower;

48 (11) "Federal banking agencies", the Board of Governors of the Federal

49 Reserve System, the Comptroller of the Currency, the Director of the Office of
50 Thrift Supervision, the National Credit Union Administration, and the Federal
51 Deposit Insurance Corporation;

52 (12) "Full-service office", office and staff in Missouri reasonably adequate
53 to handle efficiently communications, questions, and other matters relating to any
54 application for a new or existing home mortgage loan which the residential
55 mortgage loan broker is brokering, funding, originating, purchasing, or
56 servicing. The management and operation of each full-service office shall include
57 observance of good business practices such as adequate, organized, and accurate
58 books and records, ample phone lines, hours of business, staff training and
59 supervision, and provision for a mechanism to resolve consumer inquiries,
60 complaints, and problems. The director shall promulgate rules with regard to the
61 requirements of this subdivision and shall include an evaluation of compliance
62 with this subdivision in the periodic examination of the residential mortgage loan
63 broker;

64 (13) "Immediate family member", a spouse, child, sibling, parent,
65 grandparent, or grandchild. Immediate family member includes stepparents,
66 stepchildren, stepsiblings, and adoptive relationships;

67 (14) "Individual", a natural person;

68 (15) "Individual mortgage loan servicer", a person who on behalf of a
69 lender or servicer licensed by this state collects or receives payments including
70 payments of principal, interest, escrow amounts, and other amounts due on
71 existing obligations due and owing to the licensed lender or servicer for a
72 residential mortgage loan when the borrower is in default, or in reasonably
73 foreseeable likelihood of default, working with the borrower and the licensed
74 lender or servicer, collects data and makes decisions necessary to modify either
75 temporarily or permanently certain terms of those obligations, or otherwise
76 finalizing collection through the foreclosure process;

77 (16) "Lender", any person who either lends money for or invests money in
78 residential mortgage loans;

79 (17) "Licensee", any person licensed under sections 443.701 to 443.893;

80 (18) "Loan brokering", "mortgage brokering", or "mortgage brokerage
81 service", the act of helping to obtain for an investor or from an investor for a
82 borrower a residential mortgage loan secured by real estate situated in Missouri
83 or assisting an investor or a borrower in obtaining a residential mortgage loan
84 secured by real estate situated in Missouri in return for consideration;

85 (19) "Loan processor or underwriter", an individual who performs clerical
86 or support duties as an employee at the direction of and subject to the supervision
87 and instruction of a person licensed or exempt from licensing under sections
88 443.701 to 443.893;

89 (a) For purposes of this definition, clerical or support duties may include
90 activities subsequent to the receipt of a residential mortgage loan application,
91 including:

92 a. The receipt, collection, distribution, and analysis or information
93 common for the processing or underwriting of a residential mortgage loan; and

94 b. Communicating with a consumer to obtain the information necessary
95 for the processing or underwriting of a loan, to the extent that such
96 communication does not include offering or negotiating loan rates or terms, or
97 counseling consumers about residential mortgage loan rates or terms;

98 (b) For an individual to be considered engaged solely in loan processor or
99 underwriter activities, such individual shall not represent to the public through
100 advertising or other means of communicating or providing information, including
101 the use of business cards, stationery, brochures, signs, rate lists, or other
102 promotional items, that such individual can or will perform any of the activities
103 of a mortgage loan originator;

104 (20) "Mortgage loan originator", an individual who for compensation or
105 gain or in the expectation of compensation or gain takes a residential mortgage
106 loan application, or offers or negotiates terms of a residential mortgage
107 loan. Mortgage loan originator does not include:

108 (a) An individual engaged solely as a loan processor or underwriter except
109 as otherwise provided in sections 443.701 to 443.893;

110 (b) A person that only performs real estate brokerage activities and is
111 licensed or registered in accordance with Missouri law, unless the person is
112 compensated by a lender, a mortgage broker, or other mortgage loan originator
113 or by any agent of such lender, mortgage broker, or other mortgage loan
114 originator;

115 (c) A person solely involved in extensions of credit relating to time-share
116 plans, as the term time-share plans is defined in section 101(53D) of Title 11,
117 United States Code;

118 (d) An individual who is servicing a mortgage loan; and

119 (e) A person employed by a licensed mortgage broker or loan originator
120 who accepts or receives residential mortgage loan applications;

121 (21) "Nationwide Mortgage Licensing System and Registry" or "NMLSR",
122 a mortgage licensing system developed and maintained by the Conference of State
123 Bank Supervisors and the American Association of Residential Mortgage
124 Regulators for the licensing and registration of licensed mortgage loan originators
125 or licensed residential mortgage brokers;

126 (22) "Nontraditional mortgage product", any mortgage product other than
127 a thirty-year fixed rate mortgage;

128 (23) "Party to a residential mortgage financing transaction", a borrower,
129 lender, or loan broker in a residential mortgage financing transaction;

130 (24) "Payments", payment of all or any part of the following: principal,
131 interest and escrow reserves for taxes, insurance, and other related reserves and
132 reimbursement for lender advances;

133 (25) "Person", a natural person, corporation, company, limited liability
134 company, partnership, or association;

135 (26) "Purchasing", the purchase of conventional or government-insured
136 mortgage loans secured by residential real estate from either the lender or from
137 the secondary market;

138 (27) "Real estate brokerage activity", any activity that involves offering
139 or providing real estate brokerage services to the public, including:

140 (a) Acting as a real estate agent or real estate broker for a buyer, seller,
141 lessor, or lessee of real property;

142 (b) Bringing together parties interested in the sale, purchase, lease,
143 rental, or exchange of real property;

144 (c) Negotiating on behalf of any buyer, seller or lessor any portion of a
145 contract relating to the sale, purchase, lease, rental, or exchange of real property,
146 but not activity to obtain a residential mortgage loan for a borrower other than
147 bona fide seller financing;

148 (d) Engaging in any activity for which a person engaged in the activity is
149 required to be registered or licensed as a real estate agent or real estate broker
150 under any applicable law; and

151 (e) Offering to engage in any authorized activity or act in any authorized
152 capacity described in paragraph (a), (b), (c), or (d) of this subdivision;

153 (28) "Residential mortgage board", the residential mortgage board created
154 in section 443.816;

155 (29) "Residential mortgage financing transaction", the negotiation,
156 acquisition, sale, or arrangement for or the offer to negotiate, acquire, sell, or

157 arrange for a residential mortgage loan or residential mortgage loan commitment;
158 (30) "Residential mortgage loan", any loan primarily for personal, family,
159 or household use that is secured by a mortgage, deed of trust, or other equivalent
160 consensual security interest on a dwelling or residential real estate upon which
161 is constructed or intended to be constructed a dwelling;

162 (31) "Residential mortgage loan broker", any person, other than an exempt
163 person, engaged in the business of brokering, funding, servicing, or purchasing
164 residential mortgage loans;

165 (32) "Residential mortgage loan brokerage agreement", a written
166 agreement in which a residential mortgage broker agrees to do either of the
167 following:

168 (a) Obtain a residential mortgage loan for the borrower or assist the
169 borrower in obtaining a residential mortgage loan; or

170 (b) Consider making a residential mortgage loan to the borrower;

171 (33) "Residential mortgage loan commitment", a written conditional
172 agreement to finance a residential mortgage loan;

173 (34) "Registered mortgage loan originator", any individual who:

174 (a) Meets the definition of mortgage loan originator and is an employee
175 of:

176 a. A depository institution;

177 b. A subsidiary or service corporation that is:

178 (i) Owned and controlled by a depository institution; and

179 (ii) Regulated by a federal banking agency; or

180 c. An institution regulated by the Farm Credit Administration; and

181 (b) Is registered with and maintains a unique identifier through, the
182 NMLSR;

183 (35) "Residential real estate", any real property located in Missouri upon
184 which is constructed or intended to be constructed a dwelling;

185 (36) "Servicing", the collection or remittance for, or the right or obligation
186 to collect or remit for, any lender, noteowner, noteholder or for a residential
187 mortgage loan broker's own account of payments, interests, principal and trust
188 items such as hazard insurance and taxes on a residential mortgage loan and
189 includes loan payment follow-up, delinquency loan follow-up, loan analysis and
190 any notifications to the borrower that are necessary to enable the borrower to
191 keep the loan current and in good standing;

192 (37) "Soliciting, processing, placing, or negotiating a residential mortgage

193 loan", for compensation or gain, either directly or indirectly accepting or offering
194 to accept an application for a residential mortgage loan, assisting or offering to
195 assist in the processing of an application for a residential mortgage loan on behalf
196 of a borrower, or negotiating or offering to negotiate the terms or conditions of a
197 residential mortgage loan with a lender on behalf of a borrower, including but not
198 limited to the submission of credit packages for the approval of lenders, the
199 preparation of residential mortgage loan closing documents, and including a
200 closing in the name of a broker;

201 (38) "Ultimate equitable owner", a person who, directly or indirectly, owns
202 or controls an ownership interest in a corporation, foreign corporation, alien
203 business organization, trust, or any other form of business organization
204 regardless of whether the person owns or controls the ownership interest through
205 one or more persons or one or more proxies, powers of attorney, nominees,
206 corporations, associations, partnerships, trusts, joint stock companies, or other
207 entities or devices, or any combination thereof;

208 (39) "Unique identifier", a number or other identifier assigned by protocols
209 established by the NMLSR.

210 2. The director may define by rule any terms used in sections 443.701 to
211 443.893 for efficient and clear administration.

**443.704. An exempt person as defined prior to July 8, 2009, shall
2 not be required to meet the licensing requirements of sections 443.706
3 and 443.707 of the Nationwide Mortgage Licensing System and Registry
4 under the SAFE Act provisions of the federal Housing and Economic
5 Recovery Act of 2008 between July 8, 2009, and June 1, 2010. Any
6 exempt person, as defined prior to July 8, 2009, already licensed
7 between July 8, 2009, and June 1, 2010, shall not be eligible for any
8 refund of licensure fees.**

Section B. Because immediate action is necessary to prevent a reduction
2 in mortgage lending in this state, section A of this act is deemed necessary for the
3 immediate preservation of the public health, welfare, peace, and safety, and is
4 hereby declared to be an emergency act within the meaning of the constitution,
5 and section A of this act shall be in full force and effect upon its passage and
6 approval.

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